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11 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**

12 **IN THE ARIZONA TAX COURT**

13 STATE OF ARIZONA *ex rel.*

14 MARK BRNOVICH, Attorney General

15 Plaintiff,

16 v.

17 ARIZONA BOARD OF REGENTS,

18 Defendant,

19  
20 PAUL D. PETERSEN, in his official capacity  
as MARICOPA COUNTY ASSESSOR, and

21 ROYCE T. FLORA, in his official capacity as  
22 MARICOPA COUNTY TREASURER.

23 Relief-Defendants.

Case No:

TX 2019-000011

**CIVIL COMPLAINT FOR  
DECLARATORY, INJUNCTIVE,  
SPECIAL ACTION, AND QUO  
WARRANTO RELIEF**

24  
25 Plaintiff State of Arizona *ex rel.* Mark Brnovich, Attorney General for its complaint  
26 specifically alleges as follows:

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2. Because of these unauthorized actions, some of the largest existing and planned construction projects in Tempe will be built by private developers, leased back to private tenants, and yet produce no property tax revenue. This is because ABOR has offered to step in and hold bare legal title. These construction projects are therefore not included in the property tax base available to local schools and governments, even as ASU receives substantial income for its straw-man role.

3. ASU is a public university, not a commercial enterprise or an urban development authority. It is inappropriate for this educational institution to pick winners and losers in the highly competitive property development industry by negotiating for the use of ABOR's tax shielding status. The Arizona Constitution, relevant statutes, and longstanding historical practice establish that ABOR is not authorized to act in this capacity. With another mega-deal in the works, this Court must now hold ABOR and ASU accountable and require both to adhere to their enumerated powers as provided by the constitution and Legislature.

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4. Plaintiff is the State of Arizona *ex rel.* Mark Brnovich, Attorney General (“the State”).

5. Defendant ABOR is a body corporate with jurisdiction and control over the state's three public universities, including ASU.

6. ABOR may be sued pursuant to A.R.S. § 15-1625.



1        15. When writing the Arizona constitution, the framers were particularly cognizant of  
2 protecting taxpayers from the government providing property-tax breaks to favored special  
3 interests; the framers had lived through the territorial days when railroads, mines, and other  
4 interests received tax breaks at the expense of the general public. See John D. Lesby, *The*  
5 *Arizona State Constitution* 256 (2d ed. 2013); Toni McClory, *Understanding the Arizona*  
6 *Constitution* 61 (2001).

7        16. In Article 9, § 2 of the constitution, the framers set forth exactly what exemptions  
8 to property tax are permitted (either through operation of the constitution itself or through  
9 subsequent legislation, if enacted by the Legislature).

10       17. Most relevant to this case are the exemptions in Article 9, § 2(1) and 2(2), which  
11 provide that “[t]here shall be exempt from taxation all federal, state, county and municipal  
12 property” and “[p]roperty of educational, charitable and religious associations or institutions not  
13 used or held for profit may be exempt from taxation by law.”

14       18. The framers also set forth that all property not exempted is subject to taxation. See  
15 *Ariz. Const. art. IX, § 2(13)*.

16       19. Later, consistent with these provisions, the voters added that property conveyed to  
17 evade taxation cannot be exempt. See *id.* § 2(12).

18       20. For decades the Legislature has imposed property taxes on privately owned  
19 improvements located on government land, known as improvements on possessory rights  
20 (“IPRs”). See, e.g., A.R.S. § 42-19003.

21       21. During the 1980s, in the name of economic development, counties and  
22 municipalities began shielding private companies from property taxes by taking ownership of  
23 private improvements built on government land and leasing the now “government-owned”  
24 improvements back to private entities for the private entities’ use.

1       22. In 1985, the Legislature responded to this tactic by extending property taxation to  
2 private lease-hold interests in government-owned improvements; this tax was called the  
3 possessory interest tax ("PIT"), and was distinct from the IPR tax.

4       23. However, due to exceptions contained in the PIT, it was declared unconstitutional  
5 as violating Article 9, § 1's uniformity clause.

6       24. In response to these constitutional concerns, the Legislature repealed the PIT and  
7 subsequently enacted the government property lease excise tax ("GPLET"), currently set forth in  
8 A.R.S. §§ 42-6201 to -6210, which provides for an excise tax in lieu of property taxes for  
9 lessees operating on certain government-owned property improvements.

10       25. GPLET's structure applies to improvements owned by cities, towns, counties, and  
11 county stadium taxing districts. A.R.S. § 42-6201.

12       26. However, unlike counties and municipalities, ABOR had not traditionally  
13 functioned as a general commercial real estate developer and therefore the Legislature did not  
14 include ABOR in the GPLET structure, which remains inapplicable to ABOR property.

15       **ABOR's Status and Powers Relating to Holding Real and Personal Property**

16       27. The text of the Arizona Constitution and relevant statutes as well as longstanding  
17 historical practice demonstrate that ABOR is not, and has never been, authorized to rent out its  
18 tax-exempt status so that private real estate developers can build large buildings for private  
19 tenants while evading property taxes.

20       28. ABOR pre-dates statehood and has been a corporation established by Arizona law  
21 (both territorial and state) since the late 1800s.

22       29. In *Board of Regents v. Sullivan*, the Arizona Supreme Court collected authorities  
23 detailing the history of ABOR and explained that "the [1934] act did not create it a corporation;  
24 [ABOR] was already, and for a long time had been, a corporation." 45 Ariz. 245, 251 (1935).

1        30. When the framers drafted the Arizona constitution in 1910, they established a  
2 “uniform public school system,” including the university (University of Arizona) as well as the  
3 normal schools (now ASU and Northern Arizona University). Ariz. Const. art. XI, § 1.

4        31. ABOR’s sole duty is set forth in the constitution, which is the “general conduct  
5 and supervision” of the educational institutions assigned to it by law. *See id.* § 2.

6        32. Originally, ABOR managed only the University of Arizona, but over time its  
7 jurisdiction was expanded to cover the other two universities as well. *See generally* Ariz. Atty.  
8 Gen. Op. No. I17-007 (R17-013) (Dec. 7, 2017).

9        33. In *Sullivan*, the Arizona Supreme Court noted that the statutes establishing ABOR  
10 did not violate the prohibition on special laws because they were enacted to carry out the  
11 constitutional provisions stating that ABOR was to govern educational institutions as part of the  
12 state’s overall public school system; in other words, consistent with the prohibition on special  
13 legislation, ABOR was not and could not be established as a special corporation with general  
14 corporate powers. *See Sullivan*, 45 Ariz. at 255-56.

15        34. Current Arizona statutes are in accord with ABOR’s longstanding status as a state-  
16 established corporation, whose sole duty is to manage the universities.

17        35. Titled “General powers of board as a body corporate,” A.R.S. § 15-1625 states  
18 “[t]he Arizona board of regents is a body corporate with perpetual succession. The board has  
19 jurisdiction and control over the universities.”

20        36. And § 15-1625(B)(4) states that ABOR may “[p]urchase, receive, hold, make and  
21 take leases and long-term leases of and sell real and personal property *for the benefit of this*  
22 *state and for the use of the institutions under its jurisdiction*” (emphasis added).

23        37. The first restriction in § 15-1625(B)(4), “for the benefit of this state,” recognizes  
24 that ABOR is a body corporate and while it may hold legal title to property, it does so for the  
25 state, which is the beneficially interested owner.

1        38. The second restriction in § 15-1625(B)(4) covers the sole purpose for which  
2 ABOR may exercise its property-related powers—"for the use of the institutions under its  
3 jurisdiction."

4        39. To lawfully hold property, ABOR must satisfy both of the foregoing requirements.

5        40. And when discussing the ability of the State to find other sources of revenue for  
6 the universities beyond charges to students and income from state trust land, the *Sullivan* court  
7 was clear as to the need for legislative involvement: "the Legislature, or the institutions *with the*  
8 *Legislature's consent*, [may] resort to other sources of revenue than that of state taxation for that  
9 purpose." *Sullivan*, 45 Ariz. at 262 (emphasis added).

10       41. The Legislature has acted at least three times to expand ABOR's powers as it  
11 relates to holding property or conferring tax benefits, but in no case has it conferred on ABOR a  
12 general power to rent out its tax exempt status to private businesses to evade property taxes. In  
13 fact, these specific legislative actions show that the Legislature has never conferred—and does  
14 not understand ABOR to have—such a power.

15       42. First, the universities have been authorized by statute to operate university  
16 research parks, wherein private companies engaged in educational or research activities on  
17 university campuses would pay a reduced amount in property taxes. *See* A.R.S. § 15-1636.

18       43. Second, with respect to University Medical Center in Tucson, the Legislature  
19 passed a law allowing ABOR to lease its hospital and other property to a nonprofit, subject to  
20 strict controls by ABOR and/or the University of Arizona. *See* A.R.S. 15-1637.

21       44. Third, the Legislature authorized the universities to establish special taxing  
22 districts to pay for improvements to university athletic facilities. *See* A.R.S. § 48-4202(C).

### 23       **ASU's Trading On ABOR's Tax Status Through Commercial Real Estate Development**

24       45. Without ever receiving specific statutory authority comparable to that given for  
25 university research parks, health care teaching institutions, and special taxing districts, ABOR  
26 nonetheless has started entering into agreements wherein ABOR receives interests in real

1 property and improvements from private commercial companies subject to leases of the property  
2 back to the private entities.

3 46. Upon information and belief, in recent years, ABOR has entered into multiple  
4 commercial lease agreements with private enterprises allowing commercial property  
5 improvements to be built and operated on ABOR-owned real property.

6 47. These deals purport to shield the private companies from paying property taxes  
7 that otherwise would be assessed.

### 8 **Marina Heights—The Largest Commercial Real Estate Sale in Arizona**

9 48. Through a series of leases and subsequent amendments, ABOR (through ASU or  
10 its affiliate) has leased approximately 20 acres of ABOR land along Tempe Town Lake for the  
11 purpose of having a private commercial development enterprise construct the commercial office  
12 space known as Marina Heights (the “Marina Heights Property”).

13 49. The Marina Heights Property was leased to a private, commercial third-party for  
14 99 years.

15 50. Upon information and belief, the Marina Heights Property and improvements are  
16 currently leased as commercial office space to State Farm Insurance Inc. and other tenants.

17 51. Upon information and belief ABOR holds legal title to the now-completed  
18 commercial office buildings on the Marina Heights Property.

19 52. But for ABOR holding legal title, the Marina Heights Property and improvements  
20 would be subject to ad valorem taxes under Arizona law.

21 53. The “novelty” of this tax scheme can be seen in a key provision of the lease that  
22 shows even the parties to the agreement doubted ABOR’s ability to take part in a conveyance to  
23 evade taxation—if the arrangement with ABOR in the Marina Heights deal is declared unlawful  
24 for any reason, then the lessee can force the City of Tempe to take title of the improvements and  
25 impose a GPLET on the property to attempt to ensure a backup, preferential tax treatment  
26 without use of ABOR’s status.

1                                   **Mirabella Luxury Senior Living Condo Tower**

2           54.    At a duly noticed special meeting on June 22, 2016, ABOR authorized ASU to  
3 lease out 1.5 acres of real property and improvements for the purpose of constructing the senior  
4 living facility known as Mirabella on the southeast corner of Mill Avenue and University Drive  
5 (the "Mirabella Property").

6           55.    As of December 20, 2017, the Mirabella Property has been leased for 99 years to  
7 Mirabella at ASU, Inc., an Arizona nonprofit corporation and an affiliate of Pacific Retirement  
8 Services ("PRS"), an Oregon non-profit corporation.

9           56.    The Mirabella senior living facility is currently under construction.

10          57.    On information and belief, ABOR will hold title to the Mirabella Property upon  
11 completion of the facility.

12          58.    Upon information and belief, ABOR, through ASU or its affiliates, will lease the  
13 Mirabella Property to PRS or its affiliate to operate.

14          59.    But for ABOR holding legal title, the Mirabella Property would be subject to ad  
15 valorem taxes under Arizona law, or at a minimum would be required to comply with other  
16 provisions related to nonprofits obtaining tax exemptions.

17                                   **Planned Omni Luxury Hotel and Convention Center**

18          60.    ABOR is seeking to have real property it owns in Tempe on the southeast corner  
19 of Mill Avenue and University Drive developed into a hotel and conference center (the "Omni  
20 Property").

21          61.    At the duly noticed regular meeting ABOR held on November 17-18, 2016,  
22 ABOR authorized ASU to enter into agreements with the Omni Hotels Management  
23 Corporation or an affiliate for development of a privately-operated hotel on the Omni Property.

24          62.    On January 11, 2018, the Tempe City Council held a duly noticed special meeting  
25 and voted to adopt an ordinance that authorized the Mayor to execute a development agreement  
26 with Omni Tempe, LLC.

1       63.    Upon information and belief, Omni Tempe, LLC is an affiliate of Omni Hotels  
2 Management Corporation.

3       64.    On January 11, 2018, Tempe and Omni Tempe, LLC executed a development  
4 agreement (the "Development Agreement") regarding the Omni Property.

5       65.    The Development Agreement states that ABOR owned approximately 2.25 acres  
6 at the southeast corner of Mill Avenue and University Drive in Tempe that ASU and Tempe  
7 wished to redevelop into "among other things a hotel, convention and conference center and  
8 other commercial enterprises and other improvements."

9       66.    The Development Agreement states that upon its execution, ASU and Omni would  
10 enter into an "Option to Lease and Escrow Instructions" that would grant Omni an option to  
11 lease the land from ASU and, if Omni exercised its option, ASU and Omni would enter into a  
12 lease agreement where ASU would act as landlord and Omni would agree to construct  
13 improvements to the property.

14       67.    Under the lease arrangement, Omni will be the sole occupant of the land and will  
15 enjoy its use exclusively.

16       68.    Upon information and belief, the "ground lease term" will be sixty years.

17       69.    In a document entitled "City of Tempe Request for Council Action" prepared for  
18 the January 11, 2018 meeting, the Tempe City Council was informed that ASU "will record a  
19 restrictive covenant that limits the use of the property to a hotel and conference center for sixty  
20 years."

21                   **ABOR's New Policies Are Insufficient**

22       70.    At a special meeting on December 18, 2018, ABOR adopted new policies  
23 regarding leases of real property.

24       71.    One of these policies prohibits universities from engaging in long-term leases that  
25 are commercial in nature if the "primary purpose is to remove private land or real property  
26 improvements from property tax rolls."

1           72. Another of these policies requires universities to document the economic benefits  
2 of long-term leases to the university and to the State.

3           73. The belated adoption of these policies signals a tacit acknowledgement by ABOR  
4 of the tenuous nature of its actions and the growing public concern with universities and ABOR  
5 acting outside of their educational mission.

6           74. Moreover, these policies, which merely constitute vague, non-preclusive mandates  
7 on universities, do not foreclose deals that would run afoul of Article 9 of the Constitution, nor  
8 stop future unlawful or unauthorized developments such as those detailed above, which ABOR  
9 itself previously acquiesced in or even affirmatively blessed.

10           **COUNT 1: DECLARATORY AND INJUNCTIVE RELIEF THAT THE OMNI**  
11           **PROPERTY IS SUBJECT TO TAXATION**

12           75. Plaintiff re-alleges and incorporates the preceding paragraphs.

13           76. Irrespective of who owns the Omni Property and improvements thereon, the  
14 improvements must be subject to tax as an improvement on possessory rights ("IPR") if a hotel  
15 and convention center is built on the site.

16           77. Under the relevant portion of A.R.S. § 42-1004(E), the Attorney General "shall  
17 prosecute in the name of this state all actions necessary to enforce this title and title 43."

18           78. Under A.R.S. § 42-11002, "[a]ll property in this state is subject to taxation except  
19 as provided in article IX, Constitution of Arizona, and article 3 of this chapter."

20           79. Under Article 9, § 2(13) of the Arizona Constitution, "[a]ll property in the state  
21 not exempt under the laws of the United States or under this constitution or exempt by law under  
22 the provisions of this section shall be subject to taxation to be ascertained as provided by law."

23           80. Under Article 9, § 2(12) of the Arizona Constitution, "[n]o property shall be  
24 exempt which has been conveyed to evade taxation."

1           81. If Omni conveys to ABOR title to the improvements made by Omni on the Omni  
2 Property for the use of Omni, it will do so to evade taxation on the improvements and therefore  
3 the property improvements will not be exempt under Article 9, § 2(12).

4           82. If ABOR conveys an interest in the real property and improvements to Omni  
5 through a lease (or leases), it will do so as part of allowing Omni to evade taxation, and  
6 therefore the property improvements will not be exempt under Article 9, § 2(12).

7           83. Independently, even if none of the conveyances made by Omni or ABOR would  
8 trigger the bar on exemption under Article 9, § 2(12), a hotel and convention center on the Omni  
9 Property nevertheless would be subject to taxation under Arizona law because such a project  
10 would not be able to qualify for any of the available exemptions set forth in Arizona law.

11           84. A lease with Omni to build and run a hotel and convention center on land ABOR  
12 owns would not be exempt from property taxation under Article 9, § 2(1) of the Arizona  
13 Constitution.

14           85. Arizona courts have strictly construed Article 9, § 2(1), which states that “[t]here  
15 shall be exempt from taxation all federal, state, county and municipal property” as applying only  
16 to those enumerated government entities and no others. *See Tucson Transit Auth., Inc. v.*  
17 *Nelson*, 107 Ariz. 246, 252 (1971) (recognizing that laws exempting property from taxation are  
18 strictly construed); *Indus. Dev. Auth. of County of Pima v. Maricopa County*, 189 Ariz. 558, 560  
19 (App. 1997) (holding that § 2(1) excludes from that exemption the property of other political  
20 subdivisions of the state than those enumerated in its text); *accord Buckeye Pollution Control*  
21 *Corp. v. Maricopa County*, No. 1 CA-TX 05-0011, 2007 WL 5517458, at \*2-\*3 ¶¶11-13 (App.  
22 2007).

23           86. The court’s analysis in those cases is consistent with the plain language of § 2(1),  
24 which does not mention political subdivisions, even though another adjacent provision does, *see*  
25 Ariz. Const. art. IX, § 2(3), showing that the framers knew how to exempt property of all  
26 political subdivisions of the state when they wanted to, and chose not to do so in § 2(1).

1        87. ABOR is and has been a distinct entity in the form of a corporation created by the  
2 State. *See Bd. of Regents of Universities and State College v. City of Tempe*, 88 Ariz. 299, 305  
3 (1960); *see also Sullivan*, 45 Ariz. at 255-56.

4        88. ABOR's status as "the state" for purposes of property tax exemptions set forth in  
5 Article 9, § 2 is limited to its constitutionally enumerated duty of exercising supervision of  
6 educational institutions.

7        89. If ABOR has lawful authority to generally take title to property for revenue  
8 generation or economic development—something Plaintiff disputes (see Count 3, *infra*)—then  
9 ABOR does so as a political subdivision. In this capacity, ABOR falls outside of being "the  
10 state" for purposes of Article IX, § 2(1), making any such property subject to taxation in the  
11 normal course. In engaging in these types of revenue generation/economic development, ABOR  
12 would be no different than industrial development authorities or pollution control districts that  
13 the Arizona courts have previously dealt with in analogous circumstances. *See Tucson Transit*  
14 *Auth.*, 107 Ariz. at 252; *Indus. Dev. Auth.*, 189 Ariz. at 560; *Buckeye Pollution Control Corp.*,  
15 2007 WL 5517458 at \*2-\*3.

16        90. A lease with Omni to build and run a hotel and convention center on land ABOR  
17 owns likewise would not be exempt from property taxation under Article 9, § 2(2) of the  
18 Arizona Constitution and A.R.S. § 42-11104(A).

19        91. Under Article 9, § 2(2) of the Arizona Constitution, "[p]roperty of educational,  
20 charitable and religious associations or institutions not used or held for profit may be exempt  
21 from taxation by law."

22        92. Under A.R.S. § 42-11104(A), "[l]ibraries, colleges, school buildings and other  
23 buildings that are used for education, with their furniture, libraries and equipment and the land  
24 that is appurtenant to and used with them, are exempt from taxation if they are used for  
25 education and not used or held for profit."  
26

93. The exemptions provided under Article 9, § 2(2) of the Arizona Constitution and A.R.S. § 42-11104(A) cannot apply to property leased by ABOR for the purpose of establishing a commercial, for-profit enterprise such as a hotel and convention center.

**COUNT 2: QUO WARRANTO RELIEF TO PREVENT CONVEYANCE TO EVADE  
TAXATION**

94. Plaintiff re-alleges and incorporates the preceding paragraphs.

95. Under A.R.S. § 12-2041(A), the Attorney General may bring an action “in the name of the state upon his relation, upon his own information . . . against any person who usurps, intrudes into or unlawfully holds or exercises any public office or any franchise within this state.”

96. Under A.R.S. § 12-2041(B), the Attorney General “shall bring the action when he has reason to believe that any such office or franchise is being usurped, intruded into or unlawfully held *or exercised*” (emphasis added).

97. Here, ABOR is unlawfully exercising its franchise.

98. By accepting title to the proposed improvements on the Omni Property and leasing these improvements and the underlying land back to Omni for use as a hotel and conference center, ABOR would make a conveyance to evade taxation under Article 9, § 2(12) of the Arizona Constitution.

99. In Arizona, agencies and other government entities, such as ABOR, are empowered to act only in accordance with the constitutional provisions and statutes that create them.

100. Under A.R.S. § 15-1625(B)(4), ABOR may “[p]urchase, receive, hold, make and take leases and long-term leases of and sell real and personal property for the benefit of this state and for the use of the institutions under its jurisdiction.”

1        101. ABOR is not authorized by A.R.S. § 15-1625(B)(4) to make a conveyance to  
2 evade taxation and making such a conveyance would exceed its statutory authority under A.R.S.  
3 § 15-1625(B)(4).

4        **COUNT 3: QUO WARRANTO AND DECLARATORY RELIEF RELATED TO THE**  
5        **REQUIREMENTS OF A.R.S. § 15-1625(B)(4) CONCERNING "USE OF THE**  
6        **INSTITUTIONS" UNDER ABOR'S JURISDICTION**

7        102. Plaintiff re-alleges and incorporates the preceding paragraphs.

8        103. Under A.R.S. § 12-2041(A), the Attorney General may bring an action "in the  
9 name of the state upon his relation, upon his own information . . . against any person who  
10 usurps, intrudes into or unlawfully holds or exercises any public office or any franchise within  
11 this state."

12        104. Under A.R.S. § 12-2041(B), the Attorney General "shall bring the action when he  
13 has reason to believe that any such office or franchise is being usurped, intruded into or  
14 unlawfully held or exercised."

15        105. Under A.R.S. § 12-1832, "[a]ny person interested under a deed, will, written  
16 contract or other writings constituting a contract, or whose rights, status or other legal relations  
17 are affected by a statute, municipal ordinance, contract or franchise, may have determined any  
18 question of construction or validity arising under the instrument, statute, ordinance, contract, or  
19 franchise and obtain a declaration of rights, status or other legal relations thereunder."

20        106. When ABOR enters into or evidences an intent to enter into leasehold contracts  
21 pursuant to its power under A.R.S. § 15-1625(B)(4), such as the one at issue here with Omni,  
22 such action affects what property is subject to taxation.

23        107. Because the Attorney General is charged under A.R.S. § 42-1004(E) with  
24 enforcing Arizona's property tax laws, the Attorney General is a "person interested" in any such  
25 property conveyance under A.R.S. § 12-1832 and therefore entitled to declaratory judgment.

1           108. A lease with Omni to build and run a hotel and convention center on land ABOR  
2 owns will usurp, intrude, or unlawfully exercise ABOR's authority under A.R.S. § 15-  
3 1625(B)(4) because such a lease will not be for the use of the institutions under ABOR's  
4 jurisdiction, but rather for the use of private third parties.

5           109. In Arizona, agencies and other government entities, such as ABOR, are  
6 empowered to act only in accordance with the constitutional provisions and statutes that create  
7 them.

8           110. Under A.R.S. § 15-1625(B)(4), ABOR may "[p]urchase, receive, hold, make and  
9 take leases and long-term leases of and sell real and personal property for the benefit of this state  
10 and for the use of the institutions under its jurisdiction."

11           111. The requirement in § 15-1625(B)(4) that ABOR exercise its property-related  
12 powers "for the use of the institutions under its jurisdiction" means what it says—that ABOR  
13 cannot exercise those rights for private, third-parties. Taking title to improvements that are in  
14 fact used by private third parties in order to shield the private parties from applicable property  
15 taxes is not "for the benefit of the institutions under [ABOR's] jurisdiction."

16           112. When ABOR receives and thereafter holds real and personal property subject to a  
17 lease back to a private third party for that party or another third party's use, such as it appears to  
18 be poised to do with Omni, ABOR is not receiving and holding property for the use of the  
19 institutions under its jurisdiction, as required by A.R.S. § 15-1625(B)(4).

20           113. In addition, a general power to exempt privately-used property from property tax  
21 (so long as it generates revenue for the universities), which ABOR appears to have claimed for  
22 itself, would violate the non-delegation doctrine because there is no intelligible, limiting  
23 principle for the exercise of ABOR's claimed power to exempt property. The power to exempt  
24 property from ad valorem tax must be held to the same non-delegation standard as the power to  
25 impose a tax in the first place.

1           114. The Legislature can “delegate to an administrative body or official . . . the power  
2 to fix a rate of taxation according to a standard,” but must itself prescribe the standard to be  
3 used. *S. Pac. Co. v. Cochise Cnty.*, 92 Ariz. 395, 404, 377 P.2d 770, 777 (1963); *State v.*  
4 *Marana Plantations, Inc.*, 75 Ariz. 111, 114, 252 P.2d 87, 89 (1953) (“It may safely be said that  
5 a statute which gives unlimited regulatory power to a commission, board or agency with no  
6 prescribed restraints nor criterion nor guide to its action offends the Constitution as a delegation  
7 of legislative power.”); *Duhamel v. State Tax Comm’n*, 65 Ariz. 268, 272, 179 P.2d 252, 254  
8 (1947) (“An act which imposes a tax must be certain, clear and unambiguous, especially as to  
9 the subject of taxation and the amount of the tax . . . . The legislature must fix the mode of  
10 determining the amount of tax ‘with such a degree of precision as to leave no uncertainty that  
11 cannot be removed by mere computation.’” (citations omitted), *overruled on other grounds by*  
12 *Valencia Energy Co. v. Arizona Dep’t of Revenue*, 191 Ariz. 565, 959 P.2d, 1256 (1998)); *Van*  
13 *Winkle v. Fred Meyer, Inc.*, 151 Or. 455, 466, 49 P.2d 1140, 1144 (1935) (“It is a fundamental  
14 principle of constitutional law that in delegating powers to an administrative body, the  
15 Legislature must prescribe some rule of law or fix some standard or guide by which the actions  
16 of that body, in administering the law, are to be governed . . . .”); *Bade v. Drachman*, 4 Ariz.  
17 App. 55, 60, 417 P.2d 689, 694 (App. 1966) (Legislature “cannot . . . delegate to an  
18 administrative body or official not only the power to fix a rate of taxation according to a  
19 standard but also the power to prescribe the standard”).

20           115. If ABOR’s approach to its powers were allowed to stand, it could take title to all  
21 land and improvements in the entire State of Arizona (so long as it generates additional revenue  
22 for the universities through lease payments) and remove all property and improvements from the  
23 tax rolls—an absurd result showing that this claimed power violates the non-delegation doctrine.  
24 Because of this, under the constitutional avoidance canon, A.R.S. § 15-1625(B)(4) should not be  
25 construed to allow ABOR to proceed in this fashion.  
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1. Grant declaratory, injunctive, and special action relief that orders the Maricopa County Assessor to place the Omni Property on the ad valorem tax roll for Maricopa County, the Maricopa County Treasurer to collect the corresponding property tax due, if a hotel and convention center is built on the Omni Property.
2. Grant quo warranto relief preventing and enjoining ABOR and ASU from taking any action with respect to the Omni Property that exceeds the scope of their authority or authorization under A.R.S. § 15-1625; namely, relief that prevents and enjoins them from conveying or receiving conveyances to evade taxation.
3. Grant quo warranto and declaratory relief that conveying, leasing, or receiving any interests for purposes of building and operating a hotel and convention center on the Omni Property by a commercial third party is not for the use of the institutions under ABOR's authorization as required by A.R.S. § 15-1625(B)(4), and enjoin ABOR from doing the same.
4. Award Plaintiff's reasonable costs and attorneys' fees.
5. Provide such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED: January 10, 2019.

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